

INTERGOVERNMENTAL AGREEMENT

BETWEEN THE

MARICOPA COUNTY BOARD OF SUPERVISORS

AND THE

ARIZONA DEPARTMENT OF HEALTH SERVICES

(FOR FISCAL YEAR 2004/2005)

Maricopa County Contract #C3904020-2-00

ADHS Contract #HG532018

NO. 26999
Filed with the Secretary of State
Date Filed: 08/04/04
By: [Signature]
Secretary of State

This Intergovernmental Agreement ("Agreement") is entered into by and between the Maricopa County Board of Supervisors ("County") and the Arizona Department of Health Services ("Department").

WHEREAS, The County has the authority to enter into agreements with the Department for the provision of behavioral health and mental health services pursuant to A.R.S. §§ 11-201, 11-952, 36-104, 36-545.06, and 36-545.07; and

WHEREAS, A.R.S. §§ 11-952, 36-104, 36-545.06 36-545.07, and 36-550-03 authorize the Department to enter into agreements for the provision of behavioral health and mental health services in Maricopa County; and

WHEREAS, the parties acknowledge that from time to time certain persons under the age of eighteen are arrested, charged with crimes and remanded to Maricopa County Superior Court to be tried as adults for certain crimes ("Remanded Juveniles"); and

WHEREAS, the parties further acknowledge that from time to time certain Remanded Juveniles are in need of behavioral health services, including the services of a screening agency, an evaluation agency or mental health treatment agency only when ordered by the Maricopa County Superior Court; and

WHEREAS, it is the intent of the parties that the terms of this Agreement set forth the duties and responsibilities of the parties with regard to behavioral health services for Remanded Juveniles when ordered by the Maricopa county Superior Court; and

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1

TERM

Upon the filing of this Agreement with the Arizona Secretary of State's office, this Agreement shall become effective, subject to Article 8, and coterminous with the Intergovernmental Agreement between the Maricopa County Board of Supervisors and the Arizona Department of Health Services executed in connection with the parties' statutory duties to provide mental health services to the Seriously Mentally Ill and which is identified as Maricopa County Contract #C3904020-2-00 ("the SMI IGA"). This Agreement shall remain in effect until June 30, 2005, unless further amended, extended, or terminated pursuant to the provisions of this Agreement.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Remanded Juveniles: Definition. For purposes of this Agreement, "remanded juvenile" means a person who is under eighteen years of age; has been transferred to the criminal division of the superior court pursuant to A.R.S. § 8-327 or who has been charged with an offense pursuant to A.R.S. § 13-501; and has not been sentenced, pursuant to A.R.S. § 13-701 on the charges pending against the juvenile in the criminal division of the Maricopa County Superior Court pursuant to A.R.S. § 8-327 or A.R.S. § 13-501
- 2.2 Services to Remanded Juveniles. The Department agrees to provide to remanded juveniles, either directly or through a contract with the RBHA under Section 2.3 below, the services of a screening agency, an evaluation agency and mental health treatment agency, when that evaluation is ordered by the Maricopa County Superior Court pursuant to Arizona Revised Statutes, Title 36, Chapter 5, Article 4 and treatment is ordered by the superior court pursuant to Arizona Revised Statutes, Title 36, Chapter 5, Article 5. The Department's agreement to provide services to remanded juveniles under this subsection is limited by the funding provisions as set forth in Section 3.2, below.

Under the terms of this Agreement the Department or its contractors are **not** obligated to provide or pay for:

- A. Any behavioral health services except for the screening, evaluation and treatment services described above;
- B. Any screening, evaluation or treatment services after the funds described in Section 3.2 have been exhausted;
- C. Any screening, evaluation or treatment services when no mental health agency licensed to provide such services in Maricopa County is willing or available to contract for such services;
- D. Services provided to remanded juveniles under a court order for restoration for competency;
- E. Security services outside of the Maricopa County Jail when a remanded juvenile remains incarcerated and is not released pursuant to a court order;
- F. Services to transport a remanded juvenile to or from the Maricopa County Jail and to or from a mental health agency;
- G. Inpatient psychiatric treatment services that are long term (in excess of ten days) and for a purpose other than to stabilize a remanded juvenile's condition in order to return the remanded juvenile to the Maricopa County Jail.

- 2.3 Department Contracts with RBHA. The Department shall incorporate this Agreement into any and all contracts between it and the RBHA for behavioral health and mental health care services provided in Maricopa County.
- 2.4 Duties of the County. During the term of this Agreement, the County shall fulfill the obligations set forth below in this Section 2.4.

2.4.1 Commitment Proceedings. To the extent obligated by law, the County shall retain financial responsibility for Court proceeding expenses for commitment actions brought under Title 36, including, but not limited to, the costs of independent evaluators and the fees and costs for the attorneys for the prosecution, and the court-appointed defense attorneys. The Department will consult with the County regarding any effort to redesign the court commitment and evaluation process, and any such redesign will consider the financial impact on the County.

2.5 Limitations on Scope of Duties. Except as provided in Article 2 of this Agreement, the County and the Department have no obligation under this Agreement to provide behavioral health services through the Adult Probation Program, the Superior Courts of Maricopa County, the Maricopa County Public Defender's Office, the Maricopa County Juvenile Court and the Maricopa County Public Fiduciary's Office, or to provide services at any Maricopa County jail facility; provided, however, nothing in this Agreement shall reduce the statutory obligations of any party.

ARTICLE 3

FUNDING

3.1 County Funding. The County shall compensate the Department for services rendered under this Agreement in accordance with this Article 3.

3.2 Remanded Juvenile Funding. The Department and County agree to allocate the sum of \$200,000 from the Non-SMI Payment portion of the the SMI IGA to be used for screening, evaluation and treatment services provided to remanded juveniles pursuant to Section 2.2 above, (the "funds"). The Department shall have the sole discretion to manage and make disbursements from those funds. Payment for services from the funds shall be as a last resort only after all other available payors have been identified and all other payment alternatives have been exhausted. The sum of \$200,000 funds represents the total amount of funds available to perform the services described in Section 2.2. If the funds are exhausted prior to the expiration of this Agreement, the Department is not obligated to pay for or provide the services described in Section 2.2. If funds remain unspent thirty days prior to the expiration of this Agreement, and there are no remanded juveniles who qualify for the services described in Section 2.2, the Department may apply the funds for other purposes as set forth in this Agreement and the SMI IGA.

ARTICLE 4

INSURANCE

4.1 Department and County Insurance Obligations. The parties acknowledge that the Department and the County are self-insured, in whole or in part, pursuant to statutory authority. The parties agree that the general liability coverage and the professional liability coverage afforded by these insurance/self-insurance programs are sufficient to meet the purposes of this Agreement.

4.2 RBHA Insurance Obligations. The Department will require the RBHA to purchase and maintain adequate general liability coverage and professional liability coverage; furthermore, the Department will require the RBHA to name the County as an additional insured on any and all such insurance policies.

ARTICLE 5

INDEMNITY

- 5.1 Mutual Indemnity. To the extent permissible under A.R.S. §§ 41-621, et seq. and 11-981, and not prohibited by A.R.S. § 35-154, each party does hereby indemnify and hold harmless the other party from any and all liability which is the result of the intentional conduct or negligence or omission of the indemnifying party, its officers, employees, contractors, agents or anyone acting under its direction, in connection with the performance of their respective responsibilities under this Agreement.
- 5.2 The Department's Indemnity. Without limiting the rights of any party under Section 5.1 of this Agreement, the Department does hereby indemnify and hold harmless the County from any and all liabilities incurred by County which arise from the performance (or failure to perform) by the Department of its obligations under this Agreement, including any liability arising from the insufficiency or inadequacy of services provided by, through, or at the direction of the Department; provided, however, that if the County is a service provider to the RBHA, then this indemnification shall not extend to any liability of the County arising directly from its performance as a service provider. The foregoing indemnity shall also not extend to any proceedings which seek to hold the County in contempt, if such proceeding is based solely upon the actions or inactions of the County. Nothing herein shall be construed as releasing the County from any obligation to increase its contribution if so ordered by a court of competent jurisdiction.

ARTICLE 6

TERMINATION

- 6.1 Termination Without Cause. Either party shall have the right upon ninety (90) days' written notice to the other party to terminate this Agreement, in whole or in part, without cause.
- 6.2 Termination for Cause. In the event of a material breach of any of the provisions of this Agreement, the non-defaulting party may terminate this Agreement by delivering written notice to the defaulting party specifically setting forth the nature of the breach. Upon being served with such notice, the defaulting party shall have sixty (60) days in which to cure said breach. If said breach has not been cured within the sixty (60) days, then this Agreement shall be deemed terminated as set forth in the notice, and both parties hereto shall perform their respective obligations up to the effective date of such termination.
- 6.3 Termination Under A.R.S. 38-511. The parties may cancel this agreement without penalty or further obligation pursuant to A.R.S. § 38-511. The Department and the County each represent that, as of the date of execution of this Agreement, they are not aware of any facts or circumstances which would give rise to a cancellation right in favor of any party pursuant to A.R.S. § 38-511.
- 6.4 Payments Upon Termination. In the event of termination of this Agreement, the Department shall be paid as provided herein all amounts due through the date of termination.
- 6.5 Miscellaneous. Termination of this Agreement pursuant to this Article does not limit or affect the obligations of any party under any court order.

ARTICLE 7

NOTICES

Any and all written notices required or permitted under this Agreement shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a recognized overnight delivery service, addressed as follows:

A. Notice to Department shall be addressed as follows:

Catherine R. Eden, Director
Arizona Department of Health Services
150 N. 18th Ave, Suite 500
Phoenix, AZ 85007

and

Leslie Schwalbe, Deputy Director
Division of Behavioral Health Services
150 N. 18th Ave, Suite 200
Phoenix, AZ 85007

B. Notices to the County shall be addressed as follows:

David Smith, County Administrative Officer
301 West Jefferson Street, 10th Floor
Phoenix, AZ 85003

and

Maricopa County Board of Supervisors
Attn: Clerk of the Board
301 West Jefferson Street, 10th Floor
Phoenix, AZ 85003

and

Office of County Counsel
Security Center Building
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85003

Notice shall be deemed given upon hand- or courier-delivery or three (3) business days after deposit in the United States mail.

ARTICLE 8

RECORD KEEPING AND AUDITS

- 8.1 Record Keeping by the Department and the County. The Department and the County agree to keep in a form acceptable to both parties, adequate, records of remanded juveniles served pursuant to this Agreement. The content of such records shall be acceptable to both parties and shall include, but not be limited to: financial, demographic, service type, duration information, individual treatment plans and results. The parties further agree that they shall have access to

the others' records kept pursuant to this paragraph, and that such records shall be kept in a manner as to provide ready access, review and evaluation by either party.

- 8.2 Maintenance of Records. The Department and the County agree to maintain all records required by Section 8.1 above for a period of at least five (5) years.

ARTICLE 9

EXTENSIONS AND AMENDMENTS

This Agreement contains the entire agreement of the parties and may not be changed orally. Any change, modification or extension of this Agreement must be in the form of a written amendment to this Agreement signed by duly authorized representatives of both parties.

ARTICLE 10

NON-DISCRIMINATION

Each of the parties shall comply with the provisions of State Executive Order 99-4, Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disability Act.

ARTICLE 11

MISCELLANEOUS

- 11.1 Materiality. The parties agree that all of the conditions set forth herein are material to this Agreement and a breach of any condition is a breach of this Agreement.
- 11.2 Grammatical Items. When used in this Agreement, the terms "include" or "including" shall mean without limitation by reason of the enumeration. Whenever the masculine gender has been used herein, the same shall include the feminine if the context so indicates. Also, the singular shall include the plural whenever the context indicates. The term "person" shall include an individual, corporation, limited liability company, partnership, trust, estate or any other entity. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, section or exhibit.
- 11.3 Waiver. The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other or to take any action permitted as a result thereof shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing at any time shall not be construed as an accord and satisfaction.
- 11.4 Captions. Captions and section headings used in this Agreement are for convenience of reference purposes only and shall not be used to define, limit or describe the scope or intent of this Agreement.
- 11.5 Construction. The substantive laws of Arizona (without reference to any choice of law principles) shall govern the interpretation, validity, performance and enforcement of this Agreement.

- 11.6 No Third Party Beneficiaries. Nothing in this Agreement is intended to create any third party beneficiary rights in any party and the Department and the County expressly state that this Agreement does not create any third party rights of enforcement.
- 11.7 Recitals. All recitals set forth above are fully incorporated in and made a part of this Agreement.
- 11.8 Further Instrument and Documents. Each party shall, promptly upon the written request of the other party, acknowledge and deliver to the other party all future instructions and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.
- 11.9 Integration Clause. This Agreement represents the entire agreement of the parties with respect to the subject matter of this Agreement, and all prior agreements, if any, entered into between the parties regarding Remanded Juveniles are revoked and superseded by this Agreement. This Agreement is the result of negotiations between the parties and shall not be strictly construed for or against any party.
- 11.10 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.
- 11.11 Time Computation. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended to that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Time is of the essence of this Agreement.
- 11.12 Mediation. In the event of a dispute regarding the scope or meaning of any provision of this Agreement, or non-compliance of any party with any provision of this Agreement, the parties shall meet and confer in an effort to resolve such dispute. In the absence of agreement on the subject, the parties may jointly submit their differences either to non-binding mediation before a mutually acceptable person. In the event of a dispute, the parties agree to use arbitration only to the extent required by A.R.S. § 12-1518 (B) or (C).
- 11.13 No Assignment. Except as expressly provided herein, no party may delegate or assign its rights or responsibilities under this Agreement without prior written approval of the other party and any purported assignment or delegation in violation of this provision shall be void.

IN WITNESS WHEREOF, the parties hereto execute this Agreement:

MARICOPA COUNTY
BOARD OF SUPERVISORS

ARIZONA DEPARTMENT
OF HEALTH SERVICES

By: [Signature]
Director CHAIRMAN BOARD OF SUPERVISORS

By: [Signature]
Procurement Administrator

ATTEST:

[Signature]
Clerk of the Board 070704

APPROVED AS TO FORM:

Attorney General Contract No. (KR# 04-0874 EHS), which is an Agreement between Public agencies, has been reviewed pursuant to A.R.S. § 11-952 who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those parties to the Agreement represented by the Attorney General.

Terry Goddard
Attorney General

By: [Signature]
Robert J. Sorce
Print Name

Date: July 29, 2004

Pursuant to A.R.S. § 11-952, the undersigned Attorney has determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

Reserved for use by the Secretary of State

By: [Signature]
Susan Nicholas
Print Name

Date: 6/30/04